

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                        |   |                       |
|----------------------------------------|---|-----------------------|
| <b>GWENDOLYN BYARS,</b>                | § |                       |
| <b>Plaintiff,</b>                      | § |                       |
|                                        | § |                       |
| v.                                     | § | <b>3:10-CV-0884-L</b> |
|                                        | § |                       |
| <b>WASHINGTON MUTUAL BANK, et al.,</b> | § |                       |
| <b>Defendants.</b>                     | § |                       |

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

**FINDINGS AND CONCLUSIONS:**

Type of Case: This is a foreclosure action brought by a *pro se* litigant.

Parties: Plaintiff is a resident of DeSoto, Texas. Defendants are Washington Mutual Bank, Select Portfolio Servicing, Inc., DB Structure Products, Inc., and Long Beach Mortgage. The court did not issue process in this case pending preliminary screening.

Findings and Conclusions: On May 3, 2010, Plaintiff filed the complaint in this action along with a motion to proceed *in forma pauperis*. On May 10, 2010, the Magistrate Judge ordered Plaintiff to provide additional financial information in support of her request to proceed *in forma pauperis*. The order cautioned Plaintiff that failure to comply with the order would result in a recommendation that the complaint be dismissed for failure to prosecute. As of the date of this recommendation, Plaintiff has failed to comply with the above order. Nor has she sought an extension of time do so or paid the \$350.00 filing fee.

Rule 41(b), of the Federal Rules of Civil Procedure, allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127(5th Cir. 1988). “This authority [under Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 82 S.Ct. 1386 (1962)).

Plaintiff has been given ample opportunity to provide the additional financial information in support of her request to proceed *in forma pauperis*. She has refused or declined to do so. Nor has she tendered the required \$350.00 filing fee in lieu of the request to proceed *in forma pauperis*. Therefore, this action should be dismissed without prejudice for want of prosecution. *See* Fed. R. Civ. 41(b) (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified); *see also Callip v. Harris County Child Welfare Department*, 757 F.2d 1513, 1519 (5th Cir. 1985) (setting out higher standard for dismissals with prejudice for want of prosecution).<sup>1</sup>

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<sup>1</sup> It is unclear whether the higher standard for dismissal with prejudice for want of prosecution would be applicable in this case.

RECOMMENDATION:

For the foregoing reasons, it is recommended that this action be DISMISSED without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

It is further recommended that Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. #2) be DENIED.

Signed this 22<sup>nd</sup> day of June, 2010.

A handwritten signature in black ink, appearing to read "Paul D. Stickney", is written over a horizontal line.

PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

NOTICE

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error.